

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
SBC LONG DISTANCE, INC.)
For Approval of Internal)
Corporate Reorganization and)
Other Related Changes.)
_____)

DOCKET NO. 04-0339

DECISION AND ORDER NO. 21702

Filed March 22, 2005
At 3:30 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

RECEIVED
2005 MAR 28 A 8:56
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
SBC LONG DISTANCE, INC.)
For Approval of Internal)
Corporate Reorganization and)
Other Related Changes.)
_____)

Docket No. 04-0339

Decision and Order No. 21702

DECISION AND ORDER

By this Decision and Order, the commission: (1) waives the applicable requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-16.92(a) and Hawaii Administrative Rules ("HAR") §§ 6-61-105 or 6-80-17(a), as further described herein; (2) approves the transfer of SBC LONG DISTANCE, INC.'s ("Petitioner" or "SBC Long Distance") certificate of authority ("COA") to SBC Long Distance, LLC; and (3) grants Petitioner's Motion for Leave to file confidential materials under seal, pursuant to HAR § 6-61-50; subject to certain conditions described below.

I.

Introduction

Petitioner requests commission approval for the corporate reorganization and conversion of Petitioner from a corporation to a limited liability company, to be known as SBC LONG DISTANCE, LLC, and other ancillary regulatory approvals, as described further below ("Proposed Corporate

Reorganization").¹ Petitioner makes its requests² pursuant to HRS § 269-19 and HAR § 6-61-35.

Petitioner served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") copies of the Petition. The Consumer Advocate, by its Statement of Position, filed on January 6, 2005, ("Statement of Position") indicates that it does not object to the approval of the Proposed Corporate Reorganization, described above, subject to certain qualifications.

I.

Background

A.

Description of Petitioner and Related Entities

SBC Long Distance is a privately held Delaware corporation, and currently authorized to provide intrastate telecommunications services within the State of Hawaii ("State"

¹Petitioner's petition, filed on November 24, 2004 ("Petition"). The Petition refers to both SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC., dba SBC LONG DISTANCE and SBC LONG DISTANCE, INC. After taking official notice of all pertinent commission records of Petitioner, pursuant to HAR § 6-61-48, we note that in 2004 SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC., dba SBC LONG DISTANCE changed its name to SBC LONG DISTANCE, INC. See Petitioner's letter to the commission dated November 3, 2004, filed on November 4, 2004.

²Upon review of the Petition, we construe "other ancillary regulatory approvals" as Petitioner's Motion for Leave to File Confidential Materials under Seal, pursuant to HAR § 6-61-50, and request for certain waivers or exemptions, pursuant to HAR § 6-61-35.

or "Hawaii") as a facilities-based carrier and reseller.³ It is a wholly-owned subsidiary of SBC Communications, Inc. ("SBC") and its principal place of business is in Pleasanton, California. SBC is a holding company whose subsidiaries and affiliates operate predominantly in the communications service industry and have provided telecommunications services for over a hundred years.

B.

Description of Proposed Corporate Reorganization

Petitioner summarizes the Proposed Corporate Reorganization as follows:

SBC and its subsidiaries seek to undertake a corporate reorganization pursuant to which (a) SBC Long Distance will contribute its stock to its affiliate SBC Telecom, Inc. ("SBC Telecom"); (b) SBC Long Distance will convert to a limited liability company to be known as SBC Long Distance, LLC; (c) SBC Telecom will contribute all of its assets and liabilities to SBC Long Distance, LLC; and (d) SBC will contribute stock of SBC Telecom (which will own SBC Long Distance, LLC) to SBC Teleholdings, Inc. ["SBC Teleholdings"]. At present, SBC Telecom and SBC Teleholdings are wholly owned direct subsidiaries of SBC. Following the proposed reorganization, SBC Long Distance, LLC will remain a wholly owned SBC company through two intermediary, wholly owned subsidiaries - i.e., SBC Teleholdings (wholly owned by SBC) and SBC Telecom (wholly owned by SBC Teleholdings). The direct parent of SBC Long Distance, LLC following the reorganization will be SBC Telecom.⁴

³Decision and Order No. 20894, filed on April 8, 2004, in Docket No. 03-0416.

⁴Petition at 2.

Petitioner represents, among other things: (1) its customers "will see virtually no change as the result of the approval" of the Proposed Corporate Reorganization, and (2) "Customer billing, customer care contacts, and company mailing addresses will remain unchanged from those currently in effect."⁵ Petitioner further asserts that approval of the Proposed Corporate Reorganization "will serve the public interest" and it "will not affect service to end users, give any party undue advantage over another, or adversely affect Hawaii consumers or the public at large."⁶

C.

Consumer Advocate's Position

The Consumer Advocate suggests that the Proposed Corporate Reorganization, described above, does not trigger HRS § 269-19. Consequently, it does not object to Petitioner's request for approval of the Proposed Corporate Reorganization pursuant to HRS § 269-7(a). It asserts, however, that since Petitioner is a non-dominant carrier and "since there are many telecommunications providers authorized to provide resale service in the Hawaii market, it is assumed that competition in the market will serve the same purpose as public interest regulation." Therefore, the Consumer Advocate does not object to the waiver of the requirements set forth under HRS §§ 269-7(a) and 269-16.92 (customer notification requirements of a change in

⁵*Id.*

⁶*Id.* at 3-4.

long distance carrier).⁷ Nonetheless, it recommends that the commission require Petitioner to revise its current tariffs to reflect the new name change to SBC Long Distance, LLC, and submit such revised tariffs to the commission within thirty (30) days from the date of this Decision and Order.⁸

III.

Discussion

A.

HRS § 269-7(a)

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under HRS § 269-7(a), the commission will approve the proposed financial transaction if it is reasonable and consistent with the public interest.⁹

However, HRS § 269-16.9(e) also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits us to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any

⁷Consumer Advocate's Statement of Position at 4.

⁸*Id.* at 6.

⁹See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

rule, upon a determination that an exemption or waiver is in the public interest.

Upon review of the record in this docket, particularly Petitioner's representations made in this docket, we find the following: (1) that much of the telecommunications services currently provided by Petitioner are competitive; (2) that Petitioner is a non-dominant carrier in Hawaii; (3) that the Proposed Corporate Reorganization is consistent with the public interest; and (4) that competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS § 269-7(a), to the extent applicable, regarding the Proposed Corporate Reorganization (except for the transfer of Petitioner's COA to SBC Long Distance, LLC, which will be separately addressed in Section III.B. below), pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.10. Similarly, we also find it in the public interest to waive the applicability of HAR § 6-61-105 to the extent that the Petition in this docket is not in compliance with those rules. Thus, for purposes of considering this Petition, we will not require the information and documents normally required upon the filing of such Petition.

¹⁰At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application or petition involving similar transactions or circumstances.

B.

Transfer of SBC Long Distance, Inc.'s COA to
SBC Long Distance, LLC Pursuant to HRS § 269-19

HRS § 269-19 also specifically provides, in relevant part, that: "[N]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do." As such, we conclude that because Petitioner is changing its legal entity from a corporation to a limited liability company, such conversion triggers HRS § 269-19, requiring our prior approval of transfer of a COA from one legal entity (SBC Long Distance, Inc.) to another legal entity (SBC Long Distance, LLC). We, thus, disagree with the Consumer Advocate that HRS § 269-19 is inapplicable to the Proposed Corporate Reorganization as it pertains to the transfer of the COA.

Petitioner represents that it understands that "it is bound to follow all rules and regulations of the [c]ommission, and, upon its conversion to a limited liability company, will continue to accept as its own all requirements imposed upon it as a result of its originally issued [COAs]."¹¹ Moreover, the tariffs currently on file with the commission will remain unchanged, other than those "cosmetic changes required to effectuate the name change to SBC Long Distance, LLC."¹²

¹¹Petition at 3.

¹²*Id.* at 2.

In light of the above representations and upon reviewing and taking official notice of all pertinent documents in the commission's records relating to Petitioner, pursuant to HAR § 6-61-48, we find that SBC Long Distance, LLC has fulfilled the requirements of HAR § 6-80-18, to the extent applicable.¹³ Thus, we will approve the transfer of Petitioner's COA to SBC Long Distance, LLC, pursuant to HRS § 269-19, subject to the following conditions:

1. Within forty-five (45) days of the date of this decision and order, SBC Long Distance, LLC shall file its initial tariff, incorporating the change in name¹⁴;
2. SBC Long Distance, LLC shall continue to be accountable for any and all of Petitioner's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of

¹³Moreover, based on our finding made above that competition, in this instance, will serve the same purpose as public interest regulation, we will also, on our own motion, waive the requirements of HAR § 6-80-17(c) to the extent that the instant Petition did not fully comply with the requirements.

¹⁴On January 12, 2005, Petitioner submitted comments to the Consumer Advocate's Statement of Position. Specifically, Petitioner states that although it applauds the Consumer Advocate's recommendation, it is unable to revise its tariff within thirty (30) days of the Decision and Order unless such Decision and Order is issued within thirty (30) days of the planned consummation on or about March 31, 2005. On February 15, 2005, Petitioner informed the commission that the consummation date would change from on or about March 31, 2005 to on or about April 30, 2005. In light of these representations, the commission will allow Petitioner forty-five (45) days rather than thirty (30) days to file its revised tariffs. We believe that this is a sufficient amount of time to comply with this requirement, and, if necessary, Petitioner may file for an extension of time, pursuant to HAR § 6-61-23.

Petitioner's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91; and

3. Within thirty (30) days from the date of this decision and order, Petitioner and SBC Long Distance, LLC shall submit the copies of SBC Long Distance, LLC's certificate of authority to transact business in the State as a foreign limited liability company from the Department of Commerce and Consumer Affairs.

C.

HRS § 269-16.92 Requirements

HRS § 269-16.92 provides that a telecommunications carrier shall not initiate a change in a subscriber's selection or designation of a long distance carrier without first obtaining authorization from the affected subscriber.

Petitioner also seeks an exemption or waiver of our customer notification requirements under HRS § 269-16.92, pursuant to HAR § 6-61-35.¹⁵ It explains:

a subscriber notification may serve unduly to confuse customers, since [Petitioner] already does business in the State of Hawaii under the name SBC Long Distance. . . . Nevertheless, to the extent the [c]ommission deems it to be necessary, [Petitioner] is prepared to provide

¹⁵We agree with the Consumer Advocate that the applicable provision relating to exemptions or waivers of regulatory requirements for telecommunications carriers are set forth under HRS § 269-16.9 and HAR § 6-80-135 rather than HAR § 6-61-35, which deals with waiver of contested case procedures by stipulation of the parties.

Customer Notice in substantially in the form attached hereto as **Exhibit E** notifying subscribers of its planned reorganization.¹⁶

Based on the above representations and our finding made above that competition, in this instance, will serve the same purpose as public interest regulation, we agree with the Consumer Advocate and conclude that Petitioner's request for a waiver should be granted, and that the requirements of HRS § 269-16.92, to the extent applicable, should be waived, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

D.

Motion for Leave to File Confidential Materials

Under Seal, Pursuant to HAR § 6-61-50

HAR § 6-61-50 provides, in relevant part: "Stipulations for a protective order, subject to the commission's approval, may be accepted in lieu of motions for protective order."

In this docket, Petitioner also attached to its Petition, filed on November 24, 2004, a Motion for Leave to File Confidential Materials Under Seal, pursuant to HAR § 6-61-50 ("Motion for Leave"). Upon review of the record, it appears that Petitioner already designated its confidential information described in its Petition subject to Protective Order No. 04-08, filed on July 16, 2004, a non-docketed protective order that is intended to solely protect confidential information relating to Petitioner's Annual Financial Report for the year ended

¹⁶Petition at 3.

December 31, 2003. Although we find that certain confidential information submitted in this docket may be protected from disclosure under HRS Chapter 92F, or any other law, we conclude that such information cannot be subject to Protective Order No. 04-08, as such protective order does not contemplate the designation of such information. Therefore, we conclude that Petitioner's Motion for Leave should be granted, subject to the condition that Petitioner file a stipulation for protective order, pursuant to HAR § 6-61-50, that contemplates the designation of confidential information submitted in this docket for commission review and approval within thirty (30) days of the date of this Decision and Order.

IV.

Orders

THE COMMISSION ORDERS:

1. The requirements of 269-7(a), to the extent applicable, are waived with respect to the Proposed Corporate Reorganization (except for the transfer of Petitioner's COA to SBC Long Distance, LLC), subject to the applicable filing conditions described below.

2. To the extent that the Petition does not contain all of the information required under either HAR § 6-61-105 or 6-80-17(a), the applicability of those sections is waived, subject to the applicable filing conditions described below.

3. The transfer of Petitioner's COA to SBC Long Distance, LLC to operate as a facilities-based carrier and

reseller of telecommunications services in the State is approved, pursuant to HRS § 269-19 and subject to the following conditions:

- a. Within forty-five (45) days of the date of this decision and order, SBC Long Distance, LLC shall file its initial tariff, incorporating the change in name from SBC Long Distance, Inc. to SBC Long Distance, LLC;
- b. SBC Long Distance, LLC shall continue to be accountable for any and all of Petitioner's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of Petitioner's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91; and
- c. Within thirty (30) days from the date of this decision and order, Petitioner and SBC Long Distance, LLC shall submit the copies of SBC Long Distance, LLC's certificate of authority to transact business in the State as a foreign limited liability company from the Department of Commerce and Consumer Affairs.

4. The requirements of HRS § 269-16.92, to the extent applicable, are waived.

5. As the holder of a COA, SBC Long Distance, LLC shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.


6. SBC Long Distance, LLC shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail. An original and eight (8) copies of the initial tariff shall be filed with the commission with two(2) additional copies served on the Consumer Advocate. SBC Long Distance, LLC shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

7. Petitioner's Motion for Leave is granted, subject to the condition that Petitioner file a stipulation for protective order, pursuant to HAR § 6-61-50, that contemplates the designation of confidential information submitted in this docket for commission review and approval within thirty (30) days of the date of this Decision and Order.


8. Petitioner and SBC Long Distance, LLC shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAR 22 2005.

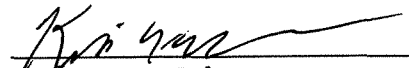
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

04-0339.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21702 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

NORMAN DESCOTEAUX
ASSOCIATE DIRECTOR - REGULATORY
SBC LONG DISTANCE
5850 W. Las Positas Boulevard, Room NE137
Pleasanton, CA 94588

ERIC FISHMAN, ESQ.
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave, NW, Suite 100
Washington, DC 20006

Attorney for SBC Long Distance, Inc.



Karen Higashi

DATED: MAR 22 2005